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January 24, 2011

VIA ECF

Honorable Roanne Mann
United States Magistrate Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *In the Matter of the Petition of North East Marine Inc. as Owners
Of the Tug ELENA, a 35' Deck Barge and a 40' Deck Barge
For Exoneration From and Limitation of Liability
United States District Court – Eastern District of New York
Case No.: CV-09-5600 (Amon, J) (Mann, M.J.)
Our File No.: 10000530 DRH/GSR*

Dear Judge Mann:

This firm represents the petitioner North East Marine Inc. as Owner of the Tug ELENA, a 35' Deck Barge and a 40' Deck Barge ("North East") in this Limitation proceeding under 46 U.S.C. § 30501 *et seq.* This action was filed by the petitioner seeking exoneration from or limitation of liability with respect to all claims that have been made or could be made against petitioner with respect to an occurrence on January 29, 2008 when Robert Boody claims he sustained serious personal injuries. Contrary to the contentions of Robert Boody, all claimants in this action have consented and seek resolutions of their claims in this action pending before the United States District Court for the Eastern District of New York. By way of example, claimant Robert Boody, not only answered the Petition filed by North East but also seeks damages against North East and El Sol for the injuries Robert Boody allegedly sustained on January 29, 2008. *See* Robert Boody's Answer to Petition and Causes of Action Seeking Damages (Docket No. 9). Other parties in this action have also made various claims or cross-claims against petitioner. Furthermore, as noted by counsel for Robert Boody, Judge Amon denied with leave to renew claimants' request to lift the stay enjoining prosecution of the State Court action.

January 24, 2011

Page 2

As noted by counsel for Robert Boody, the parties have been diligently conducting discovery in this action. Nicholas Gikes', the Project Supervisor for El Sol deposition is scheduled for January 25, 2011 and another former captain, Robert Griffith's¹ deposition has been scheduled for January 27, 2011. Alleged eye witnesses to Robert Boody's injuries, namely, Brian Green and Randy Boody are being noticed by petitioner for depositions on February 9 and 11, 2011.

We note that counsel for Robert Boody has requested certain documents from North East. Contrary to counsel's suggestion, North East has provided all counsel with some of the requested records and North East is in the process of searching for other records which were requested following the recent deposition of Francois Guillet. Counsel has also requested that North East contact their bank in an effort to obtain the copies of checks received from El Sol which were deposited in their account showing the backside of the check with endorsement. These are not records that were maintained by North East and under Rule 34 of the Federal Rules of Civil Procedure, there is no requirement that a party go to such lengths to obtain documents which could be far easier produced by El Sol which issued the checks in the first instance.

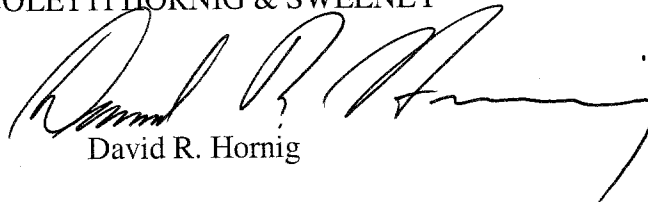
Counsel for Robert Boody does not come before this Court with clean hands. For example, counsel did not disclose or produce a statement of Robert Zervas until after conducting the depositions of Robert Boody and Francois Guillet, despite the fact that one or more parties in this action had demanded copies of any statements of any witnesses. Counsel for Robert Boody's contention that the statement was "work product" is disingenuous particularly since the document was marked for identification and referred to at the deposition of Robert Zervas. We would request that the Court order counsel for Robert Boody to produce any additional statements of any other witnesses to the occurrence along with their addresses and telephone numbers. Petitioner will attempt to take the deposition of every witness to the alleged accident.

We join in the request that the Settlement Conference be converted to a Status Conference.

Respectfully submitted,

NICOLETTI HORNIG & SWEENEY

By:


David R. Hornig

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¹ Petitioner has provided Robert Griffith's address and telephone number to all parties.

January 24, 2011

Page 3

VIA ECF

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January 24, 2011

Page 4

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